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September 7, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 31, 2006

Case Number: TSO-0431

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In November 2005, the individual was arrested for Driving Under the Influence (DUI). Because this arrest raised legitimate security concerns, the individual was summoned for an interview with a Personnel Security Specialist from the DOE's local security office. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. This evaluation took place in April 2006. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing all of the information in the individual's personnel security file, including the results of the interview and the psychiatric evaluation, the local security office determined that derogatory information existed that cast into doubt the individual's continued eligibility for a security clearance. The manager of the local DOE office informed the individual of this determination in a letter that set forth in detail the DOE's security concern and the reasons for that concern. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced twenty-two exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted five exhibits and presented the testimony of his supervisor, his father, a friend and two substance abuse counselors, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (j) pertains to information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this allegation, the Letter cites four alcohol-related arrests of the individual, including DUI arrests in August and November 2005, a petty theft arrest in July 1992 and a Driving While Intoxicated (DWI) arrest in May 1991. The Letter also refers to DOE-sponsored psychiatric evaluations of the individual in April 2006 and April 1999. After the April 2006 evaluation, the DOE psychiatrist diagnosed the individual as suffering from Alcohol Abuse, with insufficient evidence of reformation or rehabilitation. DOE Exhibit 3. After the April 1999 evaluation, another DOE consultant psychiatrist concluded that in 1991 and 1992 the individual suffered from Alcohol Abuse. DOE Exhibit 5.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and

cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material. Specifically, the results of the two DOE-sponsored psychiatric evaluations and the individual's four alcohol-related arrests adequately justify the invocation of paragraph (j). The individual does not contest these diagnoses. Hearing Transcript (Tr.) at 63. Accordingly, the issue that I must decide is whether the individual has demonstrated adequate evidence of reformation or rehabilitation from Alcohol Abuse. For the reasons set forth below, I conclude that he has not, and that the DOE's security concerns remain unresolved.²

In attempting to show adequate evidence of reformation or rehabilitation, the individual demonstrated, through the testimony and documentary evidence that he presented at the hearing, that he had abstained from alcohol use for approximately 13 months and that he had been receiving alcohol abuse treatment at a local facility and from local substance abuse counselors for approximately one year. The individual also produced evidence indicating that he is a good employee and a caring parent who has diligently pursued his rehabilitation. The individual's period of abstinence was established by his testimony and that of his father, his supervisor and his friend. The individual also produced the results from liver function tests (Individual's Exhibit 4) and 43 "breathalyzer" examinations that occurred between November 2005 and the date of the hearing.³ These results all support the individual's claim that he had abstained from alcohol use for approximately 13 months as of the date of the hearing.

The individual also presented evidence concerning the alcohol treatment program he is pursuing. Two substance abuse counselors testified at the hearing and also provided letters of recommendation on the individual's behalf. Individual's Exhibits 1 and 2. The first counselor stated that the

² Those security concerns are that the excessive use of alcohol might impair an individual's judgment and reliability, and ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (*affirmed by OSA*, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (*affirmed by OSA*, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (*affirmed by OSA*, 1995).

³ The breathalyzer results were not admitted into the record because of difficulties in making legible copies of these documents. However, I examined them at the hearing, and the results are all negative for alcohol. In conjunction with the liver tests and the testimony of the witnesses, they convince me that the individual has abstained from alcohol use during the period from his November 2005 arrest to the date of the hearing.

individual has attended 74 group therapy sessions since beginning outpatient treatment at a local substance abuse treatment facility in January 2006.⁴ She further stated that the individual “appears motivated, honest and sincere,” and that his prognosis is “good.” Individual’s Exhibit 2. The second counselor said that the individual has “demonstrated a sustained pattern of abstinence from alcohol so as to render [*sic*] previous diagnosis of alcohol abuse currently non-supportable.” He added that the individual appears “to be functioning at a very high level - demonstrating responsibility, dependability, exceptional parenting skills and self-care.” Individual’s Exhibit 1. The individual testified that he intends to continue with the group sessions at the treatment facility, Tr. at 65, and to completely refrain from alcohol in the future. Tr. at 63.

It is apparent that the individual has made significant progress in addressing his Alcohol Abuse problem. However, there are two factors that lead me to conclude that the individual is not yet demonstrating adequate evidence of reformation or rehabilitation. The first is the DOE psychiatrist’s evaluation of the individual. As previously indicated, in his April 2006 written evaluation, the DOE psychiatrist concluded that the individual suffered from Alcohol Abuse, with inadequate evidence of reformation or rehabilitation. In order to demonstrate adequate reformation or rehabilitation, he said that the individual would have to completely abstain from alcohol use for one year and receive one year of outpatient therapy, both periods beginning as of the date of the evaluation. DOE Exhibit 3 at 10.

After hearing all of the testimony and examining the exhibits offered by the individual at the hearing, the DOE psychiatrist declined to alter his opinion. Tr. at 94. Accordingly, he concluded that the individual needed approximately five more months of abstinence and outpatient treatment in order to demonstrate adequate evidence of rehabilitation or reformation. The DOE psychiatrist observed that after one year of sobriety, a diagnosis of alcohol abuse is no longer considered to be applicable. However, he added that whether an abuser who has abstained for one year is rehabilitated is a different question. Tr. at 98.

The DOE psychiatrist went on to explain that the severity of the individual’s alcohol abuse and his high level of defensiveness led the DOE psychiatrist to conclude that the individual needed more than one year of sobriety and therapy to demonstrate adequate evidence of rehabilitation or reformation. With regard to the severity of the individual’s disorder, the DOE psychiatrist observed that he met three of the four criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision, when a finding of only one criterion is necessary for that diagnosis. In addition, he noted that the individual had four alcohol-related arrests, all of which occurred while the individual was holding a security clearance. Finally, the DOE psychiatrist found the individual’s alcohol problem to be particularly severe

⁴ There is conflicting information in the record about the number of group sessions that the individual has attended. During his testimony, the individual indicated that he attended 54-57 group sessions between January 2006 and the date of the hearing. Tr. at 59. However, the sign-in sheet that the individual submitted (Individual’s Exhibit 5) provides a third figure. It shows that he attended 44 meetings during this period, or one to two meetings per week. For each meeting attended by the individual, the sheet provides the date, the length of the meeting and the signature of the therapist in attendance. I find this sheet to be the most credible source of information about the number of meetings that the individual attended.

because he had attempted to stop or control his drinking on multiple occasions and had been unable to do so. Tr. at 107.

With regard to the level of defensiveness exhibited by the individual, the DOE psychiatrist testified that “there was a high level of denial in his reporting of each” of the arrests, almost to the point of constituting falsification. *Id.* This defensiveness caused the DOE psychiatrist to question the credibility of the individual’s other statements. Moreover, he indicated during his interview with the DOE psychiatrist that he did not feel that he had a “significant alcohol use problem, [and] that he was doing these things because it was required by his employer to keep his job.” Tr. at 108.

I find there to be ample support in the record for the DOE psychiatrist’s conclusions. In particular, I find it significant that when the individual began out-patient treatment in January 2006 he was diagnosed at the treatment facility as suffering from Alcohol Dependence, Individual’s Exhibit 2; Tr. at 41, which is generally recognized as being a more serious disorder than Alcohol Abuse. Tr. at 94. The substance abuse professional who made that diagnosis did not testify, the basis for the diagnosis is unclear, and the DOE psychiatrist concluded that the individual did not qualify for a diagnosis of Alcohol Dependence. *Id.* However, I believe that the existence of this diagnosis suggests that the DOE psychiatrist was correct in his conclusion about the severity of individual’s alcohol use disorder.

Further evidence of the individual’s defensiveness and lack of candor concerning his disorder also surfaced at the hearing. Specifically, the individual testified that he did not tell his father, his counselors, or the friend who testified at the hearing about all of his alcohol-related arrests. Tr. at 69-70. The significance of this is two-fold. First, a lack of candor with substance abuse counselors can adversely affect the quality of their diagnoses and the effectiveness of treatment. Indeed, the second counselor testified that he would have “scrutinized” the individual’s diagnosis more carefully had he been aware of his complete legal history. Tr. at 85-86. Second, when asked at the hearing whom he would turn to if he felt tempted to consume alcohol in the future, he replied that he would confide in his counselors, his father and the friend who testified at the hearing. Given his lack of a sponsor, Tr. at 74, I find the existence of an effective support system to be particularly important in the individual’s case. However, I am concerned that this effectiveness will be compromised if the individual is unwilling or unable to be completely open and honest with the people in whom he confides. It is this defensiveness and lack of candor, along with the DOE psychiatrist’s evaluation, that lead me to believe that the individual has not demonstrated adequate evidence of reformation or rehabilitation.

V. CONCLUSION

I therefore find that the individual has failed to adequately address the security concern set forth in the Notification Letter, and I conclude that he has not demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest.

Accordingly, the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: September 7, 2007

